

## **The Real Story:**

### **Spin, Truth, and Law Firms**

Don't you find it interesting that, as lawyers, we are professionally trained to dig through and rip away "spin" in order to get down to the core of an issue, the center of what is really happening – and yet, when it comes time for law firm leaders to speak to rank-and-file partners, or to the outside world, they often resort to "telling a story" that is so completely fantastical that it leaves you shaking your head in incredulity and amazement?

It's all the more paradoxical since the fairy tales are often addressed to an audience professionally trained to pull the story apart and reveal it for the fantasy it is. How can such illogical practice be so persistent and widespread? It cannot just be coincidence or happenstance. What is really going on?

The "speak" of law firms is rooted in advocacy. Not just any kind of advocacy, but litigation advocacy. What is truth, what is fact, what is accurate is not some objective and scientific result, nor is it the outcome of the application of a shared higher morality based on a value system.

It is rather a malleable and flexible outcome derived from what the attorney can convince others to believe to be true, factual, and accurate. It is the outcome of a "sales job" to a jury of twelve good men and women (or one or more good judges), of one possible version of what is fact, and what the attorney wants them to agree with in order to create an outcome desired for the client.

A person could never (and should never) get away with deliberately telling a story fashioned like that outside the courtroom in a personal or business situation, especially not with any expectation of being regarded as honest and reputable. But in a courtroom, the rule is that whatever the jury or judge as trier of fact determines to be fact, true, and accurate is, for all practicable purposes, factual, truthful, and accurate. It may not be right. It certainly is not "justice." It is almost never "fair." But as lawyers, we know that it is the process that rules. It's the way things are.

We agree to the process and its outcome, we have come to rely on it, and we are inherently comfortable with it. The outcome is based on a set of accepted rules and procedures for resolving differences of opinion that have sharpened to disputes requiring resolution. It is far from perfect, as we all know, but it is rooted in our Constitution and it is an effective method of protecting the rights of individuals whom we have determined are deserving of such protection.

For these purposes, and in contrast to the rules and procedures adopted in most other nations, we have come to be very proud and protective of our system. While acknowledging its shortcomings and constantly striving to make it better, we believe it to be the best in the world.

For lawyers, it is the tool we have learned to respect and to use. Unfortunately it is but one tool, and there are many problems. As the saying goes, "if the only tool you have is a hammer, pretty soon every problem begins to look like a nail."

### **Different Venues**

In a law partnership, those "rules" of the courtroom and judicial system don't really apply and there

typically is no judge to administer them. Similarly, the divorce rates and stressed personal relationships of lawyers are unquestionably affected by the application of "lawyering" to those personal relationships. Business relationships likewise do not necessarily benefit from the application of those skill sets.

The "truth" in a law firm becomes what the leadership says it is, absent an effective means of counterbalance and control. At most law firms, there is no such balance. The process is more the way in which lawyers handle many matters in the vigorous representation of the interests of their clients. It can be aptly characterized as follows...

"Unless this clearly crosses the line of what I can do, then I can do it, and it really does not matter if the other side likes it or not. I will do it because I can do it. I have the power and position to do it. What is 'right' and what is 'fair' and what is 'just' has nothing to do with it, unless I elect in my sole and absolute discretion to step back from the limits of what I can do based on my power and position. Were the roles reversed, I fully expect and believe that you would do it to me. That is justification and reason enough for me to do it. Stop me if you can. Otherwise, get out of the way or get run over."

In a dispute or confrontation between attorneys working on behalf of their clients, the court system provides a check against stepping beyond the rules and penalties for abuse. What about within the law firm?

There really are few checks or defenses. The "truth" becomes what the leadership in its sales job or "spin" mode says it is, absent the aforementioned means of effective counterbalance and control. Within the inner circle of a few powerful partners, there may be checks and balances between them, not unlike an alliance of warlords in a feudal kingdom. But, between the policies and procedures set by that inner circle, and how it is presented to the remainder of the partnership, the balances are nonexistent or at best gratuitous.

### **Persecuted Majorities**

The process can thus lead to ever greater fantasy renditions of what is happening and what the position of the firm and its business are, often departing boldly from reality. The version of the story is whatever version serves the interest of the group that promulgates it. The rank and file has no effective means to challenge the story. They would be challenging those who control the setting of their compensation, who determine the allocation of firm resources for developing and serving their clients, and, increasingly, who can decide on who stays and who goes within the partnership itself.

The result is that the overwhelming majority of partners persistently duck, focusing on getting their work done and staying within the boundaries of a defined "good citizenship" so as not to become targets. Those who do not are often made bloody examples because the inner circle of partners has the power and the incentive to do so in order to keep the rest of the partnership in line.

For a rank-and-file partner, it means you keep quiet and stay. If you don't like it, your only real option is to leave. The reality, however, is that, if you leave one law firm for another, you probably just change the address, becoming part of a separate dynamic that functions a lot like the one you just left.

The balance that used to exist was the oft-vaunted "culture" of a law firm. A culture formed when all the partners in the firm could be seated at a single table. When the personal relationships and respect were strong enough to overwhelm the urge to "lawyer" a solution, the personal bonds of doing what is right, in the right way, would by consensus be adopted and followed.

The new "business" structure of large institutional law firms has lost that balance. The result is an out-of-control and unbalanced form of management and administration in which there is no accountability for leadership failure or means of redressing bad behavior by leaders. Until such accountability is addressed, there will be carnage at all levels.

So what is going on? One possible story is the one you hear. But it is almost certainly not the "real story."